



Atty. Dkt. No. 026032-5038

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Michalak, et al
Title: SEAT BACK ADJUSTMENT
MECHANISM
Appl. No.: 10/578,278
International Filing Date: 11/5/2004
371(c) Date: 5/5/06
Patent No.: 7611199
Grant Date: 11/3/2009
Examiner: Erika P. Garrett
Art Unit: 3636
Confirmation Number: 2120

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent, which issued on 11/3/2009 as U.S. Patent No. 7,611,199.

The Patent Office determined that the patent was entitled to 235 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the

PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 397 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 428 days

(b) Total Applicant delay: 31 days

Final PTA Determination: 397 days

Applicants therefore respectfully request that the patent be accorded 397 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Applicants request further that a decision on this request be **deferred or delayed** until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Respectfully submitted,

Date December 28, 2009

By 

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Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 026032-5038
Application Number: 10/578278
Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Priority Date	11/11/2003	-906		
CLOSE WINDOW	ALL CASES				
Edit Delete	International Filing Date	11/05/2004	-546		
Edit Delete	National Stage Entry (All 371(c) Requirements Met)	05/05/2006	0		
	PCT National Stage Commencement Date	05/05/2006	0		
	14 month From Application date	07/05/2007	426		
Edit Delete	Non-Final Office Action	10/31/2007	544	118	
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	01/31/2008	636		
	Non-Final Office Action Rsp. Rcv'd at PTO + 4 mo	05/31/2008	757		
Edit Delete	Non-Final Office Action	10/06/2008	885	128	
	Non-Final Office Action + 3 months	01/06/2009	977		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	02/06/2009	1,008		31
	3 Year Period Starts	05/05/2009	1,096		
	Non-Final Office Action Rsp. Rcv'd at PTO + 4 mo	06/06/2009	1,128		
Edit Delete	Notice of Allowance	06/26/2009	1,148	(20)	
Edit Delete	Issue Fee Paid	09/22/2009	1,236		
Edit Delete	Patent Grant Date	11/03/2009	1,278	182	
	Totals:			428	31
	PTA:			397	

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Foley & Lardner LLP